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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1979

No. 79-

CORRIE H. TANKERSLEY, *et al*,

Petitioners,

v.

TRINITY PRESBYTERIAN CHURCH OF MONTGOMERY, ALABAMA, A CORPORATION, AND JOHN M. WARD, *et al*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Corrie H. Tankersley, et al, respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Alabama in the above entitled case.

OPINIONS BELOW

The Opinion of the Supreme Court of Alabama (App. A p. 3a) is reported at 374 So. 2d 861. The Order of the Supreme Court of Alabama denying rehearing (App. B p. 15a) is not yet reported. The Order of the Circuit Court of Montgomery County, Alabama (App. B p. 15a) is not reported.

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on August 17, 1979. The Order of the Supreme Court of Alabama denying a timely petition for rehearing was entered on

September 14, 1979. The Order for judgment and costs by the Supreme Court of Alabama was entered on October 2, 1979 (App. B p. 15a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

QUESTION PRESENTED

Does the First Amendment as interpreted by this Court in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), and *Jones v. Wolf*, 99 S. Ct. 3020 (1979), permit a State Court to reject the decision of the highest tribunal of a hierarchical religious denomination upon issues of internal organization and ecclesiastical law and substitute its own judgment in such matters by invoking the doctrine of laches and estoppel where such decision may affect the use and control of church property?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.

U.S. Const., Amend. XIV, Sec. 1:

> * * * nor shall any state deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

Trinity Presbyterian Church of Montgomery, Alabama, was organized by the appropriate Presbytery of The Presbyterian Church in the United States (hereafter referred to as PCUS) on July 30, 1891. At all times thereafter it was an integral part of PCUS, subject to its form of church government as set forth in *The Book of Church Order*. PCUS is, as this Court has expressly previously held, a connectional or hierarchical church. Its Book of Church Order provides for ascending judicatories starting with the Session of the local church consisting of the pastor and the ruling elders. A Session is

governed by and reports to a Presbytery which has jurisdiction over a number of local churches in a specified geographical area. The Presbytery is governed by and responsible to a Synod which is composed of two or more Presbyteries, and the Synods in turn are governed by and responsible to the General Assembly, the highest court in PCUS. Section 14-5 of *The Book of Church Order* states in part, "These courts are not separate and independent tribunals. They have a mutual relation, and every act of jurisdiction is the act of the whole Church performed by it through the appropriate Church court." In Section III, Paragraph 5, of the Preface to *The Book of Church Order* it is stated, "The courts may have authority over one or many churches, but sustain such mutual relations as to express the unity of the Church."

On September 25, 1973 the Presbytery of East Alabama (the Presbytery governing Trinity Presbyterian Church of Montgomery, Alabama) adopted a Resolution purporting to set guidelines for local member churches and member ministers who wished to withdraw from PCUS. A complaint by a member of the Presbytery questioning the validity of the Resolution was on the same day filed with the Synod of the Mid-South, which is the Synod governing East Alabama Presbytery. On March 25, 1975 the Synod upheld the complaint to the action of the East Alabama Presbytery with a dissenting Opinion. Thereafter, the Synod duly referred the complaint to the General Assembly for final determination and on June 14, 1976 the General Assembly of the PCUS determined as its final judgment that the action of the East Alabama Presbytery in adopting the Resolution in question was wholly unconstitutional, hence, void and of no effect, and that any churches purportedly dismissed thereunder remained within the jurisdiction of the Presbytery and subject to its constitutional authority. (See App. C p. 32a)

Notwithstanding the pending complaint, on November 4, 1973, at a meeting of the congregation of Trinity Presbyterian Church of Montgomery, Alabama, a Resolution was adopted "That Trinity Presbyterian Church of Montgomery, Alabama, requests dismissal from The Presbyterian Church in the United

States to the Presbytery of the Evangel of the Continuing Presbyterian Church." The vote was 814 for and 112 against. There were over 1,700 members of Trinity Presbyterian Church at that time Following this congregational action, the six individual plaintiffs who are members of Trinity Presbyterian Church filed a complaint with the Presbytery questioning the validity of the action. At its next meeting, the Presbytery of East Alabama approved the request of Trinity Presbyterian Church for dismissal from PCUS to another denomination. At this same meeting the complaint of the individual plaintiffs was referred to the docket of the first stated meeting of Presbytery after the complaint against the Presbytery action in establishing guidelines for withdrawing of churches and ministers "has been resolved by action of the Synod . . . or General Assembly."

Notwithstanding the pending complaints, certain of the officers and members of the local congregation thereupon became affiliated with and announced their allegiance to the other denomination and assumed control over the church properties to the exclusion of those members who remained loyal to PCUS. Promptly after the final judgment was rendered by the General Assembly (the highest tribunal of PCUS), the members of the congregation loyal to PCUS sought to regain possession of the church properties in reliance upon that church court decision. Possession was refused, and this action was commenced in June of 1977 in the Circuit Court of Montgomery County, Alabama.

In the meantime on May 25, 1975 an Administrative Commission was appointed by Presbytery to assist the loyal minority which had been recognized by Presbytery as constituting the congregation of Trinity.

There was no controversy in the action as to where legal title to the church property was vested. It was conceded by all parties concerned that it was vested in Trinity Presbyterian Church of Montgomery, Alabama. Plaintiffs contended that Trinity Presbyterian Church of Montgomery, Alabama was still an integral part of PCUS and that the attempted withdrawal

was null and void in view of the action of the General Assembly. They further contended that the defendants, having renounced any allegiance to PCUS and joined another denomination, namely, Presbyterian Church of America (formerly known as The Continuing Presbyterian Church), were no longer members of Trinity Presbyterian Church of Montgomery, Alabama and had no right to the property of such church.

The matter came on for a bench trial before the Honorable G. H. Wright, Jr., Circuit Judge, who received stipulations, took testimony and heard arguments, and on July 14, 1978 filed his Order holding for the plaintiffs. He made extensive and well documented findings of fact in applying the law previously well established in Alabama based on deference to church court decisions in matters involving church polity.

In an Opinion filed August 17, 1979 the Supreme Court of Alabama reversed and rendered judgment for the defendants.

The Alabama Supreme Court recognized that the determinative issue in the case was whether the decision by the General Assembly of PCUS rendered June 14, 1976 was ecclesiastical in nature and thus binding on that Court. The Court stated, "We find that the portion of the above mentioned decision, which attempts to revoke permission to withdraw from PCUS and the Presbytery of East Alabama, given by the Presbytery of East Alabama to local churches such as Trinity Presbyterian, after such churches have acted and relied upon that permission, is not ecclesiastical in nature, and therefore, not binding on this court." The Alabama Supreme Court further held, "* * * that the failure of the appellees/plaintiffs to follow the proper remedies provided for by the PCUS Book of Church Order made the adoption of Trinity Presbyterian Church's request for dismissal by the Presbytery of East Alabama final. Appellees/plaintiffs are now estopped from asserting any possible rights to dominion, possession, and control of the church corporation, and its property, in the civil courts of this state." The Alabama Supreme Court thus rejected the decision of the highest ecclesiastical tribunal of PCUS and substituted its own judgment in a matter of church internal organization and ecclesiastical law, in direct conflict

with the teachings of this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

On September 14, 1979 the Alabama Supreme Court denied petitioners' timely petition for rehearing, and this petition for a writ of certiorari followed.

REASONS FOR GRANTING WRIT

I. The Supreme Court of Alabama Has Decided a Federal Question of Substance in a Way Not in Accord With the Decision of This Court in *Serbian Eastern Orthodox Diocese v. Milivojevich*.

On June 14, 1976, the General Assembly of PCUS (the highest judicatory of such denomination) held that the action of the East Alabama Presbytery in dismissing Trinity Presbyterian Church from PCUS to Presbyterian Church in America (PCA) was wholly unconstitutional and void. It further held that any churches purportedly dismissed thereunder still remain within the jurisdiction of the Presbytery of East Alabama and subject to its constitutional authority.

The trial judge held he was bound by such decision of the church court and found for the plaintiffs who had been recognized by the Presbytery as constituting the congregation of Trinity Presbyterian Church of Montgomery, Alabama. The Supreme Court of Alabama in reversing held it was not bound by the decision of the General Assembly because property rights were involved and because of laches and failure to follow proper remedies provided by the PCUS Book of Church Order.

This specific rejection of the decision of the highest church court by the Supreme Court of Alabama was not in accord with the decision of this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed. 2d 151. There this Court said:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes

> over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them. [426 U.S. at 725-26]

Further, this Court said:

> The conclusion of the Illinois Supreme Court that the decisions of the Mother Church were "arbitrary" was grounded upon an inquiry that persuaded the Illinois Supreme Court that the Mother Church had not followed its own laws and procedures in arriving at those decisions. We have concluded that whether or not there is room for "marginal civil court review" under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, no "arbitrariness" exception — in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunals of a hierarchical church complied with church laws and regulations — is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them. [426 U.S. at 713-14]

Milivojevich teaches that church court decisions *must* be followed by civil courts except perhaps in cases of fraud or

collusion, neither of which is involved here. There is no room for civil court rejection of the church court decision on the ground of laches or failure to follow proper procedure. That is just the vice that was condemned in *Milivojevich*. The substitution of the Alabama Supreme Court's ideas of proper remedies and procedures for that of the highest church court is constitutionally impermissible.

> The constitutional evils that attend upon any "arbitrariness" exception in the sense applied by the Illinois Supreme Court to justify civil court review of ecclesiastical decisions of final church tribunals are manifest in the instant case. [426 U.S. at 716]

The path trod by the Alabama Supreme Court is constitutionally impermissible in view of *Milivojevich* and it is a matter of substance involving important First and Fourteenth Amendment interpretation.

II. The Decision of Jones v. Wolf, _____ U.S._____, 99 S. Ct. 3020, Has Been Incorrectly Interpreted as Modifying the Firmly Established Rules of *Watson v. Jones* and *Milivojevich* so as to Permit State Courts Under the Guise of "Neutral Principles" to Disregard Any Church Court Decision Whenever Property Rights May be Affected, Thus in Effect Changing the Polity of Hierarchical Churches to That of Congregational Churches.

The Supreme Court of Alabama apparently felt that its decision was justified in the light of *Jones v. Wolf*. See footnote 3 in the Majority Opinion and the Concurring Opinion of Justice Maddox and Chief Justice Torbert.

In refusing to be bound by the decision of the church court, the Alabama Supreme Court said "The Trial Court gave too broad an interpretation to the *Watson* case." The Supreme Court of Alabama completely ignores *Serbian v. Milivojevich* despite the fact that such decision was cited four times in plaintiffs' brief in the Supreme Court of Alabama and despite the fact that it was relied upon by the trial judge. In the case of *Jones v. Wolf*, on remand from this Court, the Supreme Court of Georgia under the guise of "neutral principles" has indicated its willingness to impose a congregational form of government on an hierarchical church by refusing to follow the decisions of the church court on matters of internal organization and government. See Opinion filed September 27, 1979 (App. E p. 43a), not yet reported.[1]

The Georgia Court on remand held:

> Accepting the dictates of a church court that decided which faction had the right of use and enjoyment of church property, based upon church court resolution of matters of religious doctrine or faith, was perceived by this court as being contrary to the spirit of controlling law. *Maryland and Virginia Eldership of the Church of God v. Church of God at Sharpsburg*, 396 U.S. 367, 367 (90 S.Ct. 499, 24 L.Ed.2d 582) (1970); *Jones v. Wolf*, supra. Now clearly given the choice to opt for either rule, this court chooses to adopt the rebuttable presumption of majority rule. (App. E p. 44a)

Such a decision which apparently the Georgia Court felt was authorized by the decision of this Court in *Jones v. Wolf* gives the Georgia Court the right to change a church form of government hierarchical in nature to one congregational in nature and would seem to be violative of the establishment clause of the First Amendment.

On the other hand the Florida Supreme Court has reached a contrary result in *Mills v. Baldwin*, a similar case decided after *Jones v. Wolf* and upon remand from this Court. (see App. F p. 46a, decision on remand not yet reported.)

It is of the utmost importance that First Amendment rights guaranteed under the Constitution be uniformly applied throughout the nation. A definitive decision from this Court is apparently required.

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[1]We are advised by Counsel for the Petitioners in *Jones* v. *Wolf* that another Petition for a Writ of Certiorari in that case will be filed in the United States Supreme Court on or about December 26, 1979.

III. In Adopting its Book of Church Order with Regards to Property, PCUS Relied upon the *WATSON* Rule of One Hundred Years Standing as it Applied to Hierarchical Churches.

It is peculiarly appropriate that PCUS should rely upon the rule in *Watson v. Jones*, since it was a Presbyterian church that was involved in that case. Relying upon the *Watson* rule, PCUS has never required that church property be in the name of the denomination or that there be trust provisions in the deeds for church property. The relationship between the local church and the denomination as to property was spelled out in the Position Statement of the General Assembly of the Presbyterian Church in the United States on Property in 1971 which Statement was before both the trial court and the Supreme Court of Alabama and is found in Appendix D to this Petition at page 40a. This position with regards to property has resulted in ease of handling real estate transactions by local churches, has facilitated transfers of local church property, has cut red tape with regards to the execution of mortgages and has caused no real difficulty until those seeking to create a schism in the denomination seized upon the approach that church constitutions should be examined by the courts to see if the denomination had any interest in the title to the property of the local church. Relying upon the *Watson* rule, the denomination has never required reversionary clauses in deeds to local churches in favor of the denomination nor that there be trust provisions in such deeds. The denomination has never and does not now ask that the property here involved, be granted to *it*. PCUS as a denomination recognizes that the title to the property is properly in the local church. PCUS, however, as the basis for its position on church property, has relied upon the fact that it is a hierarchical church and that the local church is an integral part of the denomination. The congregation of the church is that body of persons recognized as members of that particular church by the respective courts of the church and PCUS since *Watson* has always felt and now feels that the power of the church courts to determine the members of the congregation makes unnecessary the inclusion in *The Book of Church Order* of an express trust in favor of the denomination.

In *Jones v. Wolf*, it is said:

> At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denomination church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form. [99 S.Ct. at 3027]

With all due respect, this Court was overly sanguine when it stated the burden involved would be minimal. In 1978 there were 4,010 local congregations of PCUS. What the Court suggests would be a monumental task. It is hardly fair to PCUS to change the rules in the middle of the game and the changing of such rules necessarily raises *ex post facto* questions as to pre-existing property rights. Further, each of the states in which PCUS has local congregations has property law peculiar to each such state and trust provisions satisfactory or acceptable in one state very well might be against the public policy of another state.

The point made here is clearly recognized in the dissenting opinion in *Jones v. Wolf* in footnote 2, where it it is said:

> The neutral-principles approach creates other difficulties. It imposes on the organization of churches additional legal requirements which in some cases might inhibit their formation by forcing the organizers to confront issues that otherwise might never arise. It also could precipitate church property disputes, for existing churches may deem it necessary, in light of today's decision, to revise their constitutional documents, charters, and deeds to include a specific statement of church polity in the language of property and trust law. [99 S.Ct. at 3031]

The prediction contained in the dissent in *Jones v. Wolf*,

"Not only questions of state law but also important issues of federal constitutional law thus are left to the state courts for their decision, and if they depart from *Watson v. Jones*, they will travel a course left totally unchartered by this Court." [99 S.Ct. at 3032], has already come about. Untold confusion and the complete eradication of hierarchical churches is not beyond the reach of decisions such as that of the Supreme Court of Alabama here or for that matter the decision of the Supreme Court of Georgia on remand in *Jones v. Wolf*. Here the Supreme Court of Alabama has rejected church court decisions on a vital matter of church government and procedure and has substituted its own idea of what should have been the decision of the church courts.

CONCLUSION

We respectfully urge the Court, for all of the reasons set forth above, to grant a Writ of Certiorari and to reverse the decision below.

Respectfully Submitted,
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APPENDIX

APPENDIX A

OPINION
of
THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1979
Filed August 17, 1979

TRINITY PRESBYTERIAN CHURCH
OF MONTGOMERY, ALABAMA,
a Corporation, *et al.*

77-688

v.

CORRIE H. TANKERSLEY, *et al.*

Appeal from Montgomery Circuit Court

EMBRY, Justice.

This is an action by appellees/plaintiffs, Corrie H. Tankersley, et al., a minority of the members of Trinity Presbyterian Church of Montgomery, Alabama (Trinity Presbyterian Church), and John Knox Presbytery, against Trinity Presbyterian Church and a majority of the members of Trinity to obtain control of the church's corporate entity and thus obtain dominion, control, and use of the property owned by that corporation.

After trial before the court without a jury, a decision by the General Assembly of the Presbyterian Church in the United States (PCUS), which declared a resolution adopted by East Alabama Presbytery (now John Knox Presbytery) to be null and void, was held by the trial court to be ecclesiastical in nature and, therefore, to be accepted as determinative as to who were the proper members of the Trinity Church corporation having the right to the control, possession, dominion and use of the church property. Tankersley, et al., were held by the trial court to be the proper members. We reverse and render.

The determinative issue is whether the decision by the General Assembly of PCUS, rendered 14 June 1976,[1] is ecclesiastical in nature as applied to Trinity Presbyterian Church and, thus, binding on this court. We find that the portion of the above mentioned decision, which attempts to revoke permission to withdraw from PCUS and the Presbytery of East Alabama, given by the Presbytery of East Alabama to local churches such as Trinity Presbyterian, after such churches have acted and relied upon that permission, is not ecclesiastical in nature, and therefore, not binding on this court.

This action was filed by the John Knox Presbytery of PCUS (by members of one of its Administrative Commissions) and six individual members of Trinity Presbyterian Church against the officers and trustees of Trinity Presbyterian Church and certain individuals as representatives of the class of the majority of members of that church.

The complaint alleged that (1) six members of Trinity Presbyterian Church have been specially designated by the John Knox Presbytery as the local congregation of Trinity Presbyterian Church; (2) Trinity Presbyterian Church was organized in 1891 as a church in PCUS and has been continuously a church in PCUS, subject to the constitutional jurisdiction of the Presbytery; and (3) the minority members of Trinity, designated by the PCUS as the true local congregation of Trinity, are entitled to the sole direction and control of the properties of the church corporation. The relief sought was an award to appellees/plaintiffs of dominion, control and possession of the church properties; an accounting of the church corporation's affairs; rent to be paid by appellants/defendants for the use of church properties; an injunction of appellants'/defendants' further use of the properties; and the injunction of appellants'/defendants' further use of the name of Trinity Presbyterian Church. Appellants/defendants answered, denying that

[1]The decision declared the resolution of the Presbytery of East Alabama allowing local churches to withdraw to be null and void and that any churches dismissed pursuant to that resolution remained subject to the jurisdiction of the Presbytery of East Alabama.

appellees/plaintiffs were entitled to the relief demanded and raising numerous defenses, including estoppel and laches. After agreeing to a stipulation of certain facts, issues were joined and trial ensued. Thereafter, a judgment was entered granting the relief demanded excepting the requirement that rents be paid by appellants/defendants for the use of the church property. This appeal followed.

Trinity Presbyterian Church was organized by the appropriate Presbytery of the PCUS on 30 July 1891. The PCUS is a hierarchical or connectional church with a system of church government consisting of church courts in ascending order. The lowest level church court is the Session of the local church. It is governed by the Presbytery. The Synod is the next highest court. It governs and reviews actions of the Presbytery. The highest court of the church is the General Assembly. These courts comprise the government of PCUS, and are not separate and independent tribunals. Each of these courts exercises exclusive original jurisdiction over all matters specially belonging to it; however, the lower courts are subject to the review and control of the higher courts, in regular graduation as provided for in the PCUS Book of Church Order.

The Session, the church court or governing body of a local church in the PCUS, is composed of the minister and ruling elders of the church; the latter are representatives elected by the local congregation. Each local church is a member of a Presbytery and its actions are reviewed by that Presbytery. On 4 November 1973 Trinity Presbyterian Church was a member of the East Alabama Presbytery in the PCUS which comprised a geographical area of Southeast Alabama and contained approximately sixty (60) churches. East Alabama Presbytery (now John Knox Presbytery) is in turn a member of the Synod of Alabama which has the same geographical boundaries as the State of Alabama and contains five Presbyteries. As mentioned earlier, the highest church court in PCUS is the General Assembly and it is the supreme governing body. The General Assembly is composed of thirteen Presbyteries which comprise the geographical area of the thirteen Southern states in the United States.

The governing instrument of PCUS is the Book of Church Order. The Fourteenth Printing, 1972, was the version of the Book of Church Order governing PCUS at the time the Presbytery of East Alabama adopted Trinity Presbyterian Church's resolution to withdraw from the PCUS. The Book of Church Order provided, and still provides, in chapters thirteen through nineteen, a system of review of the actions of the lower courts by the higher courts of PCUS.

On 18 March 1892 Trinity Presbyterian Church was incorporated by the members of the church in accordance with the laws of this state. The name of the corporation at the time of incorporation was Central Presbyterian Church of Montgomery, Alabama. No reference to PCUS was mentioned in the instrument of incorporation. Subsequently, the certificate was properly amended to change the name of the corporation to Trinity Presbyterian Church of Montgomery, Alabama. In this amendment the purpose of the corporation was stated as follows:

> "* * * the purposes of the corporation were the maintenance of a church for the worship and service of God * * *"

Again there was no mention of PCUS. However, from the date of its organization until the adoption of its resolution to withdraw, Trinity Presbyterian Church was a member of PCUS.

Title to all property in dispute here was acquired by the church corporation. There has been no alienation or other disposition of the real property involved in this action. None of the property was acquired prior to the church's incorporation or after 4 November 1973. All of the deeds conveying the property in question simply recite the name of the corporation as grantee without reference to PCUS. The Trinity Presbyterian Church corporation has acquired and mortgaged property without permission or consent from PCUS. No agency or court of PCUS above the local church session and congregation has ever made any financial contribution, donation, or loan to Trinity Presbyterian Church.

Appellees/plaintiffs stipulated that title and right to dominion, control and use of the property at issue lies with the church corporation. They concede that PCUS has no proprietary or contractual interest in the property involved, except in the case of dissolution of the corporation as provided in Section 6-3 of the Book of Church Order. Appellees/plaintiffs contend that appellants/defendants are no longer members of the corporation and, therefore, have no right to dominion, use, or control of the property in dispute.

The parties stipulated that as of November 1973 there was no express provision in the Book of Church Order prohibiting the withdrawal of a local church or imposing any penalty or forfeiture if such a withdrawal occurred. Sometime in 1974, the Book of Church Order was amended to include a provision to this effect. Such provision was not in effect on 22 January 1974 when the Presbytery having jurisdiction over Trinity Presbyterian Church ratified that church's resolution of severance from PCUS pursuant to the guidelines adopted by that Presbytery.

On 25 September 1973 the Presbytery of East Alabama, having jurisdiction over Trinity Presbyterian Church, adopted a resolution which set guidelines for local member churches and member ministers who wished to withdraw from PCUS.[2] In accordance with these guidelines, Trinity Presbyterian Church held a congregational meeting and voted to adopt the following motion by a vote of 814 for and 112 against:

> "* * * that Trinity Presbyterian Church of Montgomery, Alabama requests dismissal from the Presbyterian Church in the United States to the Presbytery of the Evangel of the Continuing Presbyterian Church (now Presbyterian Church in America)."

All the guidelines adopted by the Presbytery of East Alabama were followed.

The motion adopted by Trinity Church was a request to be dismissed from PCUS and not a unilateral withdrawal. An administrative commission of the Presbytery of East Alabama

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[2]Book of Church Order § 16-7(8) gives the power to receive and dismiss churches to the Presbytery.

subsequently voted unanimously to dismiss Trinity Presbyterian Church, and the Presbytery ratified this dismissal on 22 January 1974. Neither the appellees/plaintiffs nor anyone else filed a complaint to this action of the Presbytery as allowed by § 117-1 of the Book of Church Order. The Synod did not attempt to correct the action taken by the Presbytery in its yearly review of the actions of the Presbyteries under its dominion as provided for in §§ 114-1 and 114-2 of the Book of Church Order; furthermore, no injunction or protest of any form was issued to Trinity Presbyterian Church by the Synod or General Assembly in an attempt to stop the withdrawal. However, a complaint was duly made by a member of the Presbytery of East Alabama to the Synod in opposition to the action of the Presbytery in adopting guidelines allowing member local churches to withdraw. The Synod referred the complaint to the General Assembly. Again, no injuction was issued or other attempt made to suspend the effect of the dismissal resolution.

On 14 June 1976 (approximately two years, nine months from adoption by the Presbytery of guidelines for withdrawal) the General Assembly adopted as a final judgment a preliminary judgment issued by its permanent judicial commission which decreed:

> "1) The action of the Presbytery of East Alabama in adopting the resolution in question is wholly unconstitutional, hence void and no effect:
>
> "2) any actions taken thereunder by sessions, congregations, ministers or the administrative commission are similarly void and of no effect;
>
> "3) any ministers purportedly dismissed thereunder remain within the jurisdiction of the Presbytery of East Alabama and subject to its constitutional authority until dismissed in accordance with proper procedures; and
>
> "4) any churches purportedly dismissed thereunder remain within the jurisdiction of the Presbytery of East Alabama and subject to its constitutional authority."

After adoption of this decree or judgment contact was made with the attorneys for appellants/defendants in an effort

by the appellees/plaintiffs to obtain the property in question without litigation. Prior to this contact, Trinity Presbyterian Church had received no communication from PCUS since Trinity's withdrawal. After negotiations failed, appellees/plaintiffs made demand for the surrender of the property, but appellants/defendants refused to surrender it. Subsequently, on 9 June 1977, appellees/plaintiffs filed this action. Prior to filing this action, PCUS officially recognized the six individual plaintiffs and any other members of Trinity Presbyterian Church who were loyal to PCUS as the true congregation of Trinity Presbyterian Church.

I

The primary issue in this case is what effect the civil courts of this state give to the decision rendered by the General Assembly of PCUS on 14 June 1976. The lower court found the decision of the General Assembly was an ecclesiastical one even though it affected property rights, and consequently held the case of *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871), required that such ecclesiastical decision be binding in the present litigation. That finding was erroneous.

The trial court gave too broad an interpretation to the *Watson* case. While *Watson* clearly stands for the principle that civil courts cannot resolve disputes concerning spiritual or ecclesiastical affairs, and decisions of a hierarchical church's judicatories must be followed regarding such matters, it does not prevent civil courts from resolving disputes concerning civil or property rights. *Abyssinia Missionary Baptist Church* v. *Nixon*, 340 So. 2d 746 (Ala. 1977); *Williams* v. *Jones*, 258 Ala. 59, 61 So. 2d 101 (1952). The U.S. Supreme Court recognized the right of civil courts to decide disputes concerning church property in *Presbyterian Church* v. *Mary E. B. Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) and in *Maryland & Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970). Both *Hull* and *Sharpsburg* clearly indicate that civil courts have authority to decide disputes concerning church property; however, civil courts cannot resolve controversies involving religious doctrine or practice in deciding such property disputes.

In other words, the courts must decide the property disputes by looking at so-called "neutral principles of law" and not resolve the underlying controversies over religious doctrine. *Hull*, 393 U.S. 440 at 449.

In this case, the issues involved clearly dealt with property; there was no need to decide any ecclesiastical issues in order to decide the property issues. The basic question in the case was: who were the members of the corporation; in other words, who owned the corporation and thus owned the church property? This was a legal question because it involved issues of property rights and the constituency of a legal entity created by statute. The courts in this state have long recognized the concept that, whenever there is an incorporated church, there exist two entities. *Williams* v. *Jones*, supra; *Hundley* v. *Collins*, 131 Ala. 234, 32 So. 575 (1901). Stated otherwise, there is a spiritual church and a secular legal corporation, each separate though closely connected. Each entity has a separate purpose. Questions involving the spiritual church are ecclesiastical in nature, and civil courts cannot decide any questions concerning this entity. In contrast, the secular corporate entity is formed by the state and performs civil functions, e.g., holding title to church property, and is in no sense ecclesiastical in its function; therefore, civil courts can decide questions concerning the corporation.

The trial court committed reversible error by allowing the General Assembly's decree to be binding in this litigation since the composition of the church's corporate structure was the principal issue to be determined. The trial court should have made its own independent determination of which group was entitled to dominion and control of the corporation following the standards set forth in *Presbyterian Church* v. *Mary E. B. Hull Memorial Presbyterian Church*, supra, and *Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc.*, supra.

II

We deem it necessary to render this particular case due to the delicate questions involved in church litigation combined

with the particular facts of the case. Both appellants/defendants and appellees/plaintiffs ask us to decide whether Alabama follows the rule that all property held by local churches, whether incorporated or not, is held in trust for the denominational church body if that body is a hierarchical church. Appellants/defendants argue that Code 1975, § 10-4-22 allows a local church to unilaterally withdraw from a church denomination and retain dominion, control and possession of that local church's property free of the regulation and control of any higher church body unless: (1) an implied or express trust is clearly stated in the deeds or other instruments by which the corporation derives title to its property; (2) a majority of the members of the local church vote that the statute shall not be applicable; or (3) there was control of the property in a higher church body prior to the passage of the act. Appellees/plaintiffs, on the other hand, assert that Alabama has historically adopted the position set forth in *Watson* v. *Jones*, supra, that a local church that is a member of the denomination holds its property in trust for the higher church, and the local church cannot withdraw from the higher church body and maintain dominion and possession of its property if the highest tribunal of the higher church body decrees such withdrawal is forbidden. We need not decide that issue in this case since Trinity Presbyterian Church did not unilaterally withdraw from the PCUS but withdrew with permission.

Both appellants/defendants and appellees/plaintiffs cite numerous cases involving the withdrawal of a local church from a higher church body or organization; however, all of the cases cited are different from this case in one aspect. All the cases cited involve churches that either withdrew from a higher church body unilaterally or after permission to withdraw had been denied; furthermore, in all the cases the higher church body had attempted to stop the local church from withdrawing by either issuing an injunction of its own, or by promptly filing a civil suit, or by taking some other action. See, e.g., *Vogt* v. *State*, 362 So. 2d 1 (Fla. 1978); *Jones* v. *Wolf*, 241 Ga. 208, 243 S.E. 2d 860 (1978); *Carnes* v. *Smith*, 236 Ga. 30, 222 S.E. 2d 322 (1976); *Adickes, II* v. *Adkins*, 264 S. C. 394, 215 S.E. 2d 442

(1975), cert. denied, 423 U.S. 915 (1975); *Fairmont Presbyterian Church* v. *Presbytery of Holston*, 531 S.W. 2d 301 (Tenn. 1975); *Presbytery of the Covenant* v. *First Presbyterian Church of Paris*, 552 S.W. 2d 865 (Tex. 1977). Certainly, in none of the cases cited, or that we have found, had a higher church organization given the local church permission to withdraw and then later tried to revoke that permission and gain control of the church property years after the local church acted on the permission and affiliated with another denomination, as was attempted in this case. We think this to be a very significant distinction.

In this case the six minority members of Trinity Presbyterian Church did not file a complaint with the Synod against the action of the Presbytery of East Alabama which granted Trinity Presbyterian Church permission to withdraw as provided for in the PCUS Book of Church Order, Part V, Chapter 17. Neither the Synod, the General Assembly, nor any other branch of government of the PCUS attempted to issue an order or injunction voiding or staying the permission granted to Trinity Presbyterian Church by the Presbytery. It would have been a simple matter for the Synod or the General Assembly to have ordered that no local church could withdraw from PCUS pursuant to the resolution adopted by the Presbytery of East Alabama until the General Assembly reached a determination of the constitutionality of the Presbytery's adoption of such a resolution. Nothing along this line was even attempted. Trinity Presbyterian Church was simply informed that its request had been accepted, and, consequently, Trinity acted upon that information, ceased any further communications or affiliation with PCUS, and joined another denomination. We, therefore, hold that the failure of the appellees/plaintiffs to follow the proper remedies provided for by the PCUS Book of Church Order made the adoption of Trinity Presbyterian Church's request for dismissal by the Presbytery of East Alabama final. Appellees/plaintiffs are now estopped from asserting any possible rights to dominion, possession, and control of the church corporation, and its property, in the civil courts of this state.

The situation in this case is analagous to the situation

where a party fails to exhaust its administrative remedies; such failure usually bars relief in the courts. See *Fraternal Order of Police, Strawberry Lodge No. 40* v. *Entrekin*, 294 Ala. 201, 314 So. 2d 663 (1975); *Simpson* v. *Van Ryzin*, 290 Ala. 22, 265 So. 2d 569 (1972). Here, the appellees/plaintiffs did not follow the remedies provided by the PCUS Book of Church Order. While the determinations of the judicatories of PCUS would not have been binding as to preclude the civil courts of this state from determining property rights in subsequent litigation, it would have put appellants/defendants on notice that their release from PCUS was being contested and might not be permissible under the laws of PCUS. Appellants/defendants would then have had an opportunity to defend the action of the Presbytery of East Alabama, in releasing Trinity Presbyterian Church, before the Synod and the General Assembly. Since appellees/plaintiffs failed to pursue these remedies at the proper times, we will not allow them to now try to nullify Trinity's dismissal from PCUS.

For the stated reasons, we reverse the final judgment of the lower court and hold: (1) the appellants/defendants are entitled to possession, dominion, and control of Trinity Presbyterian Church of Montgomery, Alabama, the corporation, and all property owned by that corporation; (2) the relief granted to appellees/defendants in the judgment of 14 July 1978 is erroneous and of no effect.[3]

Reversed and Rendered.
Faulkner, Almon, Shores and Beatty, JJ., concur.
Torbert, C. J. and Maddox, J., concur specially.
Bloodworth and Jones, JJ., recuse themselves.

[3]This decision was written before the release of *Jones* v. *Wolf*, ___U.S.___(1979), by the United States Supreme court; however, *Jones* appears to support our holding in this case.

77-688
Trinity Presbyterian Church, et al. v. *Tankersley, et al.*

MADDOX, Justice (Concurring specially).

I concur in the judgment rendered, because neither the Constitution of the PCUS nor the charter of Trinity Presbyterian Church contains language requiring that disputed property be turned over to PCUS. In view of this fact, I believe this case is controlled by *Jones* v. *Wolf*, ____U.S.____(1979), where the Supreme Court of the United States, by a narrow vote, modified the 100-year-old rule of *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871), by holding that a denomination has a claim to the property of a local congregation only if the denominational constitution contains language requiring that disputed property be turned over to the denomination or if the charter of the local church contains similar language.

Torbert, C. J., concurs.

APPENDIX B

ORDER DENYING REHEARING

September 14, 1979

TRINITY PRESBYTERIAN CHURCH OF
MONTGOMERY, ALABAMA, A Corporation, *et al.*
Appellant

vs.

CORRIE H. TANKERSLEY, *et al.*
Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

* * *

Application for rehearing overruled. No opinion written on rehearing.

J. O. Sentell
Clerk, Supreme Court of Alabama

ORDER ASSESSING COSTS

IN THE SUPREME COURT OF ALABAMA

Special Term 1979

August 17, 1979

Montgomery Circuit Court #CV-77-542

77-688

TRINITY PRESBYTERIAN CHURCH OF
MONTGOMERY, ALABAMA, A Corporation, *et al.*

vs.

CORRIE H. TANKERSLEY, *et al.*

ORDER

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be reversed and annulled, and this Court, proceeding to render the judgment that the circuit court should have rendered, ORDERS AND ADJUDGES that the appellants, who were the defendants in the cause in the circuit court, are entitled to possession, dominion and control of Trinity Presbyterian Church of Montgomery, Alabama, a corporation, and all property owned by that corporation.

IT IS FURTHER ORDERED AND ADJUDGED that the appellees, Corrie H. Tankersley, Virginia Allen, George S. Allen, W. R. Nickel, individually and as members of Trinity Presbyterian Church of Montgomery, Alabama, an incorporated church under the laws of Alabama and as members of Trinity Presbyterian Church of Montgomery, Alabama, an organized church in the Presbyterian Church in the United States; Vernon Broyles, McCoy Franklin, John Boyer, Neil Davis, Wilhelmena R. Jones, Tom McCabe and W. H. Albritton, as the members of the Administrative Commission of John Knox Presbytery of the Presbyterian Church in the United States and as such Administrative Commission acting as the Session of Trinity Presbyterian Church in the United States; John Knox Presbytery, an incorporated Presbytery of the Presbyterian Church in the United States, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure, for which costs let execution issue.

ORDER OF CIRCUIT COURT

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CIVIL ACTION

NO. CV 77-542

CORRIE H. TANKERSLEY, *et al.*

Plaintiffs

VS.

TRINITY PRESBYTERIAN CHURCH OF MONTGOMERY, ALABAMA, A Corporation, and JOHN M. WARD, *et al.*

Defendants.

Judgment

This is an action by *Plaintiffs* against *Defendants* seeking: (1) restoration of the dominion, control, possession and use of the properties of Trinity Presbyterian Church of Montgomery, Alabama, a corporation, to Trinity Presbyterian Church of Montgomery, Alabama, as an organized Church of the Presbyterian Church in the United States and that (2) Trinity Presbyterian Church, as an organized Church in the Presbyterian Church of America be enjoined from using the name Trinity Presbyterian Church.

The Court finds that all persons and parties who could have a lawful or equitable claim in or to the the property referred to in the Complaint and the direction and control, possession, or use of same are before this Court and that their interest therein, if any, will be finally and conclusively determined by this Judgment.

The case was tried on stipulations of the parties, documentary evidence and the oral testimony of witnesses before the Court, without a jury. Following the submission of the evidence in this case and the oral arguments of the respective

attorneys, the Court took the case under advisement to allow the attorneys to file written briefs with the Court. The Court has now considered all of the evidence in this case, the excellent briefs filed by the attorneys, and all of the cases cited to the Court, and based thereon, makes the following findings of fact and reaches the conclusion hereinafter set out.

Findings of Facts

Based on the evidence submitted by the parties, the Court finds:

Trinity Presbyterian Church of Montgomery, Alabama, in which church the individual plaintiffs are members, (formerly using the name The Central Presbyterian Church), was organized by the appropriate Presbytery of the Presbyterian Church in the United States on July 30, 1891, and declared to be "a church according to the word of God and the faith and order of The Presbyterian Church in the United States".

The Presbyterian Church in the United States is a connectional Church with a system of church government consisting of church courts in ascending order, commencing with the Session of the local church, moving to the Presbytery, which is in turn under a Synod, with the General Assembly as the highest court of the Church. These courts are not separate and independent tribunals. They have a mutual relation, and every act of jurisdiction is the act of the whole Church, performed by it through the appropriate Church court. Although each of these church courts exercise exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation. The General Assembly is the highest Court of the Church. At the time of his ordination each member of the Session of a local church is required by the Constitution of the church in his ordination vow to affirm that he approves the government and discipline of the Presbyterian Church in the United States and promises subjection to this brethren in the Lord. Each member of a local church is required to enter into a solemn covenant that such member will submit himself or herself to the government and discipline of the Church.

On March 18, 1892, Trinity Presbyterian Church of Montgomery, Alabama (then known as The Central Presbyterian Church) was incorporated by the members of said church. The Certificate of Incorporation recites: that "(the) members of the Central Presbyterian Church of Montgomery, Alabama, organized on the 30th day of July, 1891 . . . did, on the 16th day of March, 1892, meet together and transact business"; agreed that the name of the corporation would be Central Presbyterian Church of Montgomery, Alabama; elected trustees for the corporation, who filed the Certificate of Incorporation "as provided by Section 1695 of the Code of Alabama of 1886, "so that said church may thereby become duly incorporated with the powers conferred by law", under the corporate name selected. The Certificate was amended June 5, 1913 to change the name of the corporation to Trinity Presbyterian Church of Montgomery, Alabama. The amendment changing the name of the corporation recited that three-fourths of the members of the Central Presbyterian Church of Montgomery, Alabama, a corporation organized on March 18, 1892, desired to change the name of the corporation to Trinity Presbyterian Church of Montgomery, Alabama; that while it was not necessary under the law to state the purposes of the corporation "the purposes of the corporation were the maintenance of a church for the worship and service of God" and that it was not desired to make any change in the purposes of the corporation. There was no reference to The Presbyterian Church in the United States in the Certificate of Incorporation, or the Amendment.

From the date of its organization in 1891, Trinity Presbyterian Church of Montgomery, Alabama was a member and an integral part of the church denomination known as The Presbyterian Church in the United States, subject to its form of government as set forth in its Book of Church Order. Under this Book of Church Order —

> "If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all communing members on the active roll of that church shall

> be members of the corporation. The officers of the corporation, whether they be given the title trustee, or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. Powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons." (BCO 6-2)

Title to all the property in question, real and personal, was acquired by and is still vested in this church corporation. There has been no alienation or other disposition of the real property involved in this action. None of the real property in question was acquired prior to the organization of Trinity Presbyterian Church of Montgomery, Alabama as a church of the Presbyterian Church in the United States, or after November 4, 1973. All of the deeds to the property simply recite the corporate name as Grantee, without reference to its relationship to the Presbyterian Church in the United States. Trinity Presbyterian Church of Montgomery, Alabama, acting through its corporation, acquired property, executed mortgages and generally exercised dominion, control, ownership and power of disposition over its properties without the permission or consent of any higher church court. No agency or court of the Presbyterian Church in the United States above the Session and congregation level ever made any financial contribution or donation or loan to this local church for the acquisition or maintenance of any of the property involved in this suit. No question is presented in this action relating to the management, control and disposition of the real property of the corporation by any higher church body, denomination, or organization. Plaintiffs concede that neither the Presbytery nor any higher court of the Presbyterian Church in the United States has any proprietary or contractual interest in the property involved in this action, except as may be provided in Section 6-3 of the Book of Church Order in the event the church is dissolved or ceases to exist. Trinity Presbyterian Church of Montgomery, Alabama as a church of the Presbyterian Church in the United States has not been dissolved and it has not ceased to exist. It is recognized by the appropriate Presbytery as a church of the Presbyterian Church in the United States. The individual plaintiffs in this

case were on the active roll of communicant members of that church on and prior to November 4, 1973. They are still active communicant members of that church.

On September 25, 1973, the Presbytery having jurisdiction over Trinity Presbyterian Church of Montgomery, Alabama adopted a resolution purporting to set guidelines for local member churches and member ministers who wished to withdraw from the Presbyterian Church in the United States. In accordance with these guidelines a meeting of the congregation of Trinity Presbyterian Church of Montgomery, Alabama was held on November 4, 1973, at which a vote was taken on the motion —

> "that Trinity Presbyterian Church of Montgomery, Alabama request dismissal from the Presbyterian Church in the United States to the Presbytery of the Evangel of the Continuing Presbyterian Chruch" (now Presbyterian Church in America).

814 members voted for and 112 members voted against the motion. At the time of the meeting, there were over 1700 enrolled communicant members of the church.

Following this request by the church seeking dismissal from the Presbyterian Church in the United States, an administrative commission of the Presbytery having jurisdiction over this church voted unanimously on November 8, 1973, to dismiss Trinity Presbyterian Church of Montgomery, Alabama, from the Presbyterian Church in the United States, which said action was ratified by the Presbytery on January 22, 1974. No complaint was filed as to this Presbytery action and the same stands uncontested.

However, a complaint was duly made by a member of the Presbytery to the Synod of the Mid-South against the action of the Presbytery on September 25, 1973, in adopting the resolution under which the congregational action of November 4, 1973, was taken. The Synod duly referred the complaint to the General Assembly for final determination. On June 14, 1976, the General Assembly of the Presbyterian Church in the United States, which is the highest court of that denomination,

adopted as a final judgment the preliminary judgment of its permanent Judicial Commission and determined that:

(a) the action of the Presbytery in adopting the resolution in question is wholly unconstitutional, hence void and of no effect;

(b) Any actions taken thereunder by Sessions, congregations, ministers, or the Administrative Commission are similarly void and of no effect;

(c) any ministers purportedly dismissed thereunder remain within the jurisdiction of the Presbytery and subject to its constitutional authority until dismissed in accordance with proper procedures; and

(d) any churches purportedly dismissed thereunder remain within the jurisdiction of the Presbytery and subject to its constitutional authority.

This decision of the General Assembly, which is the highest court of the denomination is not infected with any fraud, collusion, or arbitrariness.

Promptly after this decision of the General Assembly, contact was made with one of the attorneys for defendants in an effort to work out some arrangement for concluding the matter without litigation. Nothing was accomplished along these lines. A demand was made for surrender of management, control, possession and use of the property to Trinity Presbyterian Church of Montgomery, Alabama as a church of the presbyterian Church in the United States. Restoration was refused. Negotiations relating to disposition of the matter continued until June 9, 1977. Promptly thereafter the complaint in this cause was filed by the plaintiffs. The evidence is not sufficient to sustain the defense of estoppel or laches.

Defendants as members, officers and agents, of a church of the Presbyterian Church in America, known as Trinity Church, with the aid and consent of the Trustees of the corporation, have had the active use, possession, and control of the property of the corporation, since November 4, 1973. There is no connection between that church and Trinity Presbyterian

Church of Montgomery, Alabama as a church of the Presbyterian Church in the United States.

The individual plaintiffs and those who remain in Trinity Presbyterian Church of Montgomery, Alabama as a church of the Presbyterian Church in the United States have been recognized by that denomination as the congregation of that church.

The question presented relates to the right of the local church which organized the corporation and whose members constitute the members of the corporation under the provisions of the Alabama Statute, the decisions of the Supreme Court of Alabama (*Hundley v. Collins*, et al, 131 Ala. 234; *Blount*, et al v. *Sixteenth St. Baptist Church*, 206 Ala. 423) and Section 6-2 of the Book of Church Order of the Presbyterian Church in the United States, to the possession, use and control of the property of the corporation as against a dissident group of former members who are now affiliated with the Presbyterian Church in America, which is a separate and distinct denomination. The right of the local church to manage, control and dispose of its own property or to have the control and direction of its own corporation, is not in dispute here.

It is the opinion and finding of the Court that the plaintiffs are entitled to the relief sought.

Opinion

In the Presbyterian Church in the United States only the Presbytery has the power and authority to organize, dissolve, or dismiss churches. The action of Trinity Church of Montgomery, Alabama seeking to be dismissed from that denomination has been declared null and void by the highest court of the denomination. In its decision the General Assembly said that any church purportedly dismissed under the resolution and proceedings of Presbytery adopted September 25, 1973, was still a church within the jurisdiction of the appropriate Presbytery of the Presbyterian Church in the United States and subject to its constitutional authority. That decision is an ecclesiastical decision and, although it affects civil rights in property, must be accepted in litigation before this Court as

conclusive, under the authority of *Watson v. Jones*, 80 U.S. (13 Wall.) 679. The *Watson* Rule is clearly stated in *Watson* itself and applies here. The Supreme Court of the United States said in that case:

> "In the case of property acquired in any of the usual modes for the general use of a religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and *ecclesiastical* government . . . and which appeals to the court to determine the right to the use of the property so acquired . . . for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. In the case of an independent congregation we have pointed out how this identity, or succession, is to be ascertained (by majority vote of the congregation), but in cases of this character (Presbyterian) we are bound to look at the fact that the local congregation is itself but a member of a much larger more important religious organization bound by its orders and judgments. There are in the Presbyterian system of *ecclesiastical government*, in regular succession, the Presbytery over the Session or local church, the Synod over the Presbytery and the General Assembly over all. These are called in the language of the church organs 'judicatories' and they entertain appeals from the decisions of those below and prescribe corrective measures in other cases. In this class of cases, we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of law, and supported by the preponderating weight of judicial authority is, that whenever the question of . . . *ecclesiastical* rule . . . has been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as bonding on them in their application to the case before them." (bracketed matter supplies)

The individual plaintiffs and those who remain in Trinity Presbyterian Church of Montgomery, Alabama have been recognized by that denomination as the congregation of that church.

The principle of *Watson* was followed in *Gonzalez v. Roman Catholic Archbishop*, etc., 280 U.S. 1, 50 S.Ct. 5 where the Supreme Court of the United States said: (1929)

> "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular court as conclusive, because the parties in interest made them so by contract or otherwise."

Again, in *Kedroff v. St. Nicholas Cathedral*, etc. 344 U.S. 94, 73 S.Ct. 143, that Court reaffirmed *Watson*, saying: (1952)

> "Ours is a government which by the 'law of its being' allows no statute, state or national, that prohibits the free exercise of religion. There are occasions when Civil Courts must draw lines between the responsibilities of Church and State for the disposition or use of property. Even in those cases when the property right follows as an incident from the decision of the church custom or law on ecclesiastical issues, the church rule controls. This under our constitution necessarily follows in order that there may be free exercise of religion."

Kedroff was accepted as controlling by the Supreme Court of Alabama in *First Methodist Church of Union Springs v. Scott*, 284 Ala. 571; 226 So. 2d 632. (1969)

In *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 C. Ct. 601, (1969) the Supreme Court of the United States stated that —

> "In *Kedroff v. St. Nicholas Cathedral* . . . the Court converted the principle of *Watson* as qualified by *Gonzalez* into a constitutional rule."

This principle has been reaffirmed by the Supreme Court of the United States in *Serbian Eastern Orthodox, etc. v. Milivojevich,* 426 U.S. 696, 96 S. Ct. 2372. (1976)

The *Watson* Rule of deference to Church authority in ecclesiastical matters has long since been adopted by the Supreme Court of Alabama, *Hudley v. Collins,* 131 Ala. 234, 32 So. 575 (1902); *Harris v. Cosby,* 173 Ala. 81, 55 So. 231 (1911); *Morgan v. Gabard,* 176 Ala. 568, 58 So. 902 (1912); *Williams v. Jones,* 258 Ala. 59 and reaffirmed by the Supreme Court of Alabama in *Putman v. Vath,* 340 So. 2d 26 (Ala. Dec. 3, 1976). Recognition and identification of churches and their congregations are purely ecclesiastical matters.

In *Harris v. Cosby,* the Supreme Court of Alabama recognized the Presbyterian family of churches as belonging to the third class of churches referred to in *Watson,* that is, "where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization, in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judiciary over the whole membership of the general organization". And, as also stated in the *Watson* Rule which has been consistently followed by the Supreme Court of Alabama, "all who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it".

The defendants in this case strongly urge that this Court adopt the neutral principles of law doctrine which was first enunciated in the *Hull* case. However, even under this doctrine, the title to the property involved in this case is where it has always been since it was acquired, viz.: in the corporation organized by members of Trinity Presbyterian Church of Montgomery, Alabama as a church of the Presbyterian Church in the United States. A church of the Presbyterian Church in America is not lawfully related to this corporation in any way. The corporation holds the property for the use and benefit of the *members* of the corporation. The members of the corporation, under Section 1695, Code of Alabama 1876 (now Sec. 10-4-20, Alabama Code, 1975) and Section 6-2 of the Constitution of the Presbyterian Church in the United States, are the members of Trinity Presbyterian Church of Montgomery, Alabama as an organized church of the Presbyterian Church in the United States, *Hundley v. Collins,* et al, 131 Ala. 234; 32 So. 575; *Blount, et al v. Sixteenth St. Baptist Church,* 206 Ala. 423, 90 So. 602, since the corporation was organized by this church, it is still the church recognized by the respective courts of the Presbyterian Church in the United States and it remains within the governing structure of that connectional denomination as that structure existed prior to the division. That church has not been dismissed. It has not been dissolved. It has not ceased to exist. There is no evidence that title and right to use and control the property of the corporation has lawfully passed from that church to the Defendants who are officers and members of a church of another denomination.

The Presbyterian Church in the United States of America is not a church of "mixed polity" in its ecclesiastical dimension. Church identity is an ecclesiastical matter. It may be "congregational as to property", but *Presbytery of the Covenant v. First Presbyterian Church of Paris,* 552 SW2d 865, (Texas Civ. App. 1977) is instructive at this point:

> " 'By congregational as to property' it is meant that the *local church* owns its property and is free to dispose of it as it wishes. But we are at once met with the fact that the loyal faction, not defendants, constitute the local church. The property was conveyed to the First Presbyterian Church of Paris, U.S., or to the corporation holding title in trust for it and the PCUS judicatories have recognized the loyal faction as that church. The right of that church to control its own property is not in dispute here."

In a clear echo of the *Watson* case, the Supreme Court of South Carolina in *Adickes v. Adkins,* 264 S.C. 394, 215 S.E.2d 442, cert. denied, 423 U.S. 913 (1975) states the situtation before the court in the case at bar, which may be paraphrased as follows:

> The defendants voluntarily associated themselves with Trinity Presbyterian Church of Montgomery, Alabama

> and became subject to the discipline and government of the Presbyterian Church in the United States. They voluntarily severed their connection and when they did they forfeited any right to the use and possession of the property of that church. By joining the Trinity Presbyterian Church of Montgomery, Alabama the members did not acquire such an interest in the property that they are entitled to take with them upon seceding. The property belonged to Trinity Presbyterian Church of Montgomery, Alabama through its corporation before the members joined the church and it belongs to the same after they have withdrawn. The Defendants simply are not now a part of that church.

This is a clear application of the *Watson* Rule where the Court said:

> "The appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action and refuse to abide by its judgments. They have first erected themselves into a new organization and have since joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. Under any of the decisions which we have examined, the appellants, in their present position have no right to the property, or to the use of it, which is the subject of this suit."

For other cases of similar import, see *St. Johns Presbytery v. Central Presbyterian Church,* 102 So. 2d 714 (Fla. 1958); *Froelich v. Rowley,* 102 So.2d 720 (Fla. 1958); *Presbytery of the Everglades v. Morgan* 125 So.2d 762, (Fla. App. 1961); *Presbytery of Cimarron v. Westminster Presbyterian Church,* 515 P.2d 211, (Okla. 1973); *Presbytery of Seattle, Inc. v. Rohrbaugh,* 489 P.2d 615, cert. denied, 405 U.S. 996, (Wash. 1971). The facts in the present case before this Court do not allow application of *Maryland and Virginia Eldership of Churches of God v. Church of God At Sharpsburg, Inc.,* 396 U.S. 367, 90 S.Ct. 499 (1970) or, *Jones, et al v. Wolf,* (Supreme

Court of Georgia — in manuscript); or the majority opinion of the Florida Court of Appeals in *Baldwin v. Mills,* 344 So. 2d 259.

Section 10-4-22, Alabama Code 1975, in the opinion of this Court is not applicable in this case and there is, therefore, no need to consider its constitutional validity. However, it should be noted here that *Kedroff v. St. Nicholas,* 344 U.S. 94, 73 S.Ct. 143, requires State statutes relating to church property to "leave control of *ecclesiastical polity* . . . to the church governing bodies."

Lastly, the Defendants ask that this Court consider the equitable approach in light of the overwhelming vote of the membership of the Church on November 4, 1973, to request dismissal from the Presbyterian Church in the United States. However, this Court is bound by the law as set forth over the years by the Supreme Court of Alabama as this Court understands the law to be. To change or modify the decisions of our Supreme Court lies within the power of that Court and not of this trial Court. The duty of this trial Court is to determine the facts in an honest and impartial manner and to apply the law as it understands the law to be to the best of its ability.

In conclusion, the Court is of the opinion that Trinity Presbyterian Church of Montgomery, Alabama was and is an integral part of the Presbyterian Church in the United States, which is a connectional church. Plaintiffs are members of that local church and are identified with that church and its corporation. That church organized, directed and controlled the corporation which holds the property involved in this case, until November 4, 1973, at which time defendants assumed control, use and occupancy of the properties of the corporation. Defendants are not related to or lawfully identified with that church, or its corporation. They have renounced any connection with or allegiance to that church by their affiliation with a totally different denomination. This they have a right to do, as individuals, but such right does not allow them to possess, use and control the property of that church and its corporation. That church has not been dissolved or dismissed, nor has it ceased to exist. There has been no transfer or alienation of the corporate

property. Under all of the applicable decisions of the Supreme Court of Alabama, the First and Fourteenth Amendments to the Constitution of the United States of America, the principle of the *Watson* cases and the Constitution of the Presbyterian Church in the United States, Trinity Presbyterian Church of Montgomery, Alabama, as a church of the Presbyterian Church in the United States, its officers, agents and members, are entitled to the exclusive, peaceable, quiet possession, use, occupancy, direction and control of the property involved in this suit.

Judgment

It is, therefore, the judgment of the Court:

1. That defendants forthwith restore to Trinity Presbyterian Church of Montgomery, Alabama, as a church of the Presbyterian Church in the United States, the exclusive, quiet and peaceful possession, occupancy, use, direction and control of the real estate described in paragraphs 6, 7 and 8 of the Complaint and the money and other property of Trinity Presbyterian Church of Montgomery, Alabama, the corporation, existing on November 4, 1973.

2. That the Clerk of this Court submit to this Court within thirty (30) days the name of a Certified Public Accountant with offices in Montgomery County, Alabama, who has no interest in this case and is not relatad to any party or attorney in this case within the fourth degree of affinity or consanguinity, and who would be willing and capable of serving as a Special Master to examine the books and records of Trinity Presbyterian Church of Montgomery, Alabama, and state the assets and liabilities of that church as of November 4, 1973, and report the same to the Court within ninety (90) days from the date of his appointment, together with any objections by defendants thereto as well as any claims for credits by defendants and the amount of credits allowed, if any. The Special Master shall handle the reference under the provisions of Rule 53 of Alabama Rules of Civil Procedure.

3. That defendants and each of them refrain from interfering in any manner with the exclusive, quiet and peaceful possession, occupancy, use, direction and control of Trinity Presbyterian Church of Montgomery, Alabama, as a church of the Presbyterian Church in the United States.

4. That defendants cease and desist from the use of the name "Trinity Presbyterian Church" in the City of Montgomery, Alabama.

5. That the costs in this cause be taxed against the defendants, for which let execution issue.

6. That the Clerk of this Court mail a copy of this Order, postage prepaid, to the following:

HON. J. D. TODD, JR.
LEATHERWOOD, WALKER, TODD & MANN
P. O. Box 2248
Greenville, South Carolina 29602

HON. V. H. ROBISON
ROBISON, BELSER, BREWER & MANCUSO, P.A.
P. O. Box 1470
Montgomery, AL 36102

HON. OWEN PAGE
305-307 Realty Building
Savannah, GA 31401

HON. W. J. WILLIAMSON
P. O. Box 467
Greenville, AL 36037

HON. W. H. ALBRITTON
ALBRITTON & GIVHAN
109 Opps Avenue
Andalusia, AL 36420

DONE this the 14th day of July, 1978.

G. H. WRIGHT, JR.
Circuit Judge

APPENDIX C

EXCERPT FROM THE MINUTES OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES. JUNE 14, 1976 pp. 92-99.

REPORT OF THE PERMANENT JUDICIAL COMMISSION ON CASES OF PROCESS

Mr. Jack G. Admire, Chairperson of the Permanent Judicial Commission, was introduced by the Moderator. Mr. Admire read the Report of the Commission in the case of Robert Strong, et al, Complainants, versus the Judicial Commission of the Synod of the Mid-South, Respondent, as follows:

ROBERT STRONG and	]	G.A. COMPLAINT
W. WOODROW BAGBY	]	No. 1-1976
vs.	]	
JUDICIAL COMMISSION OF	]	
THE SYNOD OF THE MID-SOUTH	]	

Findings of Fact

On September 25, 1973, at a regular meeting, the Presbytery of East Alabama adopted a resolution establishing an Administrative Commission with authority to dismiss churches "from the Presbyterian Church in the United States to Evangel Presbytery of the Continuing Presbyterian Church or to any other such Presbytery" upon a ¾ths vote of those present at a duly called congregational meeting of a church and to make similar dismissals, upon individual requests, of ministers of the presbytery. The entire resolution appears as Appendix A to this preliminary judgment. Certain salient features will be quoted or paraphrased in the main body of this opinion. The Commission was organized pursuant to the provisions of BCO 19-5, which prescribes the composition of administrative commissions of presbytery, and was to have a term lasting until the January 1974 stated meeting of presbytery. During this term "any church in the . . . Presbytery [might] decide by congregational meeting . . . to request [the Commission] that the presbytery dismiss it . . . to Evangel Presbytery of the Continuing Presbyterian Church or to any other such presbytery." Ministers of the presbytery might also "request dismissal from its membership and consequently from membership in the Presbyterian Church in the United States to Evangel Presbytery of the Continuing Presbyterian Church or to any other such Presbytery." The possibility that churches might request and receive dismissal whose ministers did not, and vice versa, was dealt with by providing that ministers remaining

could be authorized by Presbytery to labor outside its bounds, while those departing would be retained as supply ministers to their erstwhile churches "through the transitional period." Meetings of congregations to consider dismissal were to be called in strict compliance with the Book of Church Order. After discussion, their vote was to be taken on the "categorical question" whether dismissal to another specifically identified presbytery should be requested. Full attendance was to be urged in the notice of meeting and sessions calling such meetings were adjured in the resolution to "inform their congregations of the issues for and against the action." If a congregation voted by at least a ¾ths majority to request dismissal, the resolution provided that the church "*shall* be dismissed with its property (both real and personal) as requested," and that the "Administrative Commission of Presbytery *shall* grant . . . the request *according to the vote of the congregation*." (emphasis supplied) Appeal from a congregation's vote (preseumably either way) might be taken within 10 days, but the appeal was to be limited to consideration alone of procedural irregularities in calling or conducting the meeting or in determining the eligibility of persons to vote. On such an appeal "both sides [might] be heard, but the evidence [was to] be limited to the record and to whether the proper procedures were in fact followed. No evidence of other matters [was to] be received." The resolution did not specify to what body (Presbytery, the Commission, or Synod) such a limited appeal might be taken. The function of the Administrative Commission was strictly limited by the resolution to optional attendance of its members at congregational meetings "as observers," to receiving from the clerks of congregational meetings certificates of the voting results, to taking action thereon as dictated by the resolution's specification of votes required to require dismissal, and (possibly) to hearing appeals.

A complaint against Presbytery's action in adopting this resolution was duly made by Reverend L. E. Woodward to the Synod of the Mid-South. This complaint was referred by Synod to a Judicial Commission of the Synod which on October 10, 1974, sustained the complaint. To this action of the Judicial Commission a complaint was duly filed with the Synod of the Mid-South by Reverends Robert Strong and W. Woodrow Bagby. The Synod duly referred the complaint to the General Assembly for determination in the first instance as provided by BCO 115-3. The case is before the Permanent Judicial Commission for its preliminary judgment and report to the General Assembly in accordance with BCO Chap. 20.

Conclusion and Judgment

It is an essential characteristic of the presbyterian form of church government that specific limited powers are constitutionally allocated for exercise in the first instance by different ones of its representative assemblies (or courts), arranged in a "regular order of gradation." BCO 13-1, 14-5. Each court exercises exclusive original jurisdiction as to such matters, subject — except in the case of the highest court, the General Assembly — to review and correction by higher courts on matters both procedural and substantive. BCO

14-5, 14-6. This indeed is the gist of the connectional form of church structure and government which stands it in sharp contrast to the congregational form of church structure and government where all jurisdiction is original and exclusive with each separate congregation, there being no review. In this denomination the different courts in their regular order of gradation "are not separate and independent tribunals" but "have a mutual relation" which is designed to "express the unity of the church." This mutual relation is exactly ordered by the specific constitutional allocations of original and appellate jurisdiction. F.G. Pref. III, BCO 13-1, 14-5, 14-6. It is critical to the maintenance of this form that the various courts exercise the specific jurisdiction conferred upon them, neither usurping that not given them nor declining to exercise that given, whether by default or by attempted delegation. This connectional form of government is imbedded in our Constitution and can only be altered, generally or specifically, by formal amendment of that Constitution. BCO 30-1. Clearly none of the constituent courts (not even the General Assembly) acting alone or in concert can constitutionally alter the structure by means other than the formal amending process. Within this constitutional system exclusive original jurisdiction to dismiss churches, BCO 16-7(8), and to dismiss ministers, BCO 16-7(13), is vested in presbytery. Neither appears among the enumerated matters over which sessions (or congregations) possess exclusive original jurisdiction, BCO 15-6.

Consonant with these principles we conclude that the action of the Presbytery of East Alabama in question here was an unconstitutional attempt to abdicate the powers possessed exclusively by it to dismiss churches and ministers within its jurisdiction. In the case of churches, this included an effort to delegate the power to individual sessions and congregations. While the resolution ostensibly delegated this power to an administrative commission of presbytery, it is manifest upon inspection of the prescribed procedure that the true power of decision on the matter was sought to be given over directly to sessions and congregations. Under its design the administrative commission acted as nothing more than a loose supervisor of the congregational voting process, having only the function of observing the voting procedure (if any of the commission members so desired), of receiving reports of the voting results, and of acting upon those reported results in accordance with a predetermined mandate, having no power of substantive review. By this means presbytery sought utterly to abdicate any power to exercise independent judgment about the substantive propriety of dismissing churches within its charge, and to deprive its commission of any power to exercise such independent judgment. The unmistakable intent of this presbyterial action was to permit unilateral congregational withdrawals under the pro forma imprimatur of "dismissals" by an administrative commission of presbytery and to cut off the power of substantive review of such actions by higher church courts. This is patently at odds with the clear constitutional arrangement wherein the power to make that decision in the first instance is cast upon presbytery acting as a reasoning, evaluative body, with the power then to review presbytery action, both procedurally and substantively, reposed in higher courts of the denomination.

Complainants argue that the procedural "guidelines," provided in the resolution adequately protected the rights of the only persons to whom they would apparently concede any standing to assert them: the defeated minority of a congregation voting to request dismissal. They point to the substantial plurality — 75% — required to effect dismissals, and to the scrupulous attention to matters of notice and opportunity for discussion prior to vote which appear in the "guidelines." Even if it be conceded that in the forum provided them the formal elements of due process were effectively accorded congregational members — a matter not free of doubt under the circumstances — these arguments simply miss the point. By giving to presbytery rather than to session or congregation the power to dismiss a church the constitution of this denomination guarantees a formal meeting of presbytery as the forum in which loyalist minorities of whatever size might press their claims that they were sufficient in numbers and dedication to continue a church in its connectional relationship within this denomination. Furthermore, the assumption that only loyalist minorities of directly affected congregations have interests requiring protection in this context is also wide of the mark. Implicit in the fact that this power to dismiss is given originally to presbytery rather than to session or congregation is a recognition of the vital interest which presbytery itself — and through presbytery the entire connectional Church — has in the dismissal of any one of its churches. The interests of that wider constituency of members of the church at large is simply unrecognized by such arguments. In sum, no amount of procedural due process accorded to congregational members alone and no congregational voting plurality could save against constitutional infirmity any attempt by a presbytery to shift the forum for original decision on this matter from its own councils to those of a session or congregation and then to screen that decision from substantive review by higher courts. Considerably less than twenty-five percent of the members of a particular congregation present at any congregational meeting might be quite able as a body to sustain a church as its congregation. This resolution seeks to deprive them of the right to make that constitutionally guaranteed claim in the first instance in presbytery, and to have any adverse decision in that court subjected to substantive review by higher courts.

The gist of what has been said so far is that this attempt by presbytery to delegate to individual congregations the power in effect to dismiss themselves violates the church constitution. Judgment could well be rested on that ground alone. If this were done, however, two questions might remain which should appropriately be addressed in this opinion. The first is whether by *any* action a presbytery may constitutionally give to an administrative commission its decision-making power in respect of the dismissal of churches. The basic ground for decision here is that the particular administrative commission created by the resolution in question was a mere shell, with no power of decision; that the actual delegation was therefore to congregations; and that this was unconstitutional. This leaves the question whether a more appropriate direct delegation of this particular power to an administrative commis-

sion, truly acting as such, see BCO 19-2, 118-2, might pass constitutional muster. If the answer were no, this would provide an additional ground for judgment. Suffice it for this case to express strong reservations, without deciding the point explicitly, whether presbytery by any form of delegation may give over to an administrative commission the power to dismiss churches.

This leads to the second question. Assuming that some form of delegation of the dismissal power by presbytery to an administrative commission might be permissible, to what ecclesiastical bodies might presbytery authorize it to make dismissals? Clearly presbytery could not authorize a commission to effect dismissals which presbytery itself could not effect. There are constitutional limits on presbytery's power here. They were expressed in 1974 by the General Assembly in the case of *Harvard A. Anderson vs. The Synod of Florida*, Minutes of the 114th General Assembly, pp. 119-121 (1974). That case, decided after adoption of the resolution in question, held that a presbytery could not constitutionally dismiss its churches to "independency" nor to any specified body except another presbytery of this denomination or of ecclesiastical bodies with which union with this denomination is permitted by the Book of Church Order. These latter include, in addition to certain specifically identified denominations, BCO 31-1, any other ecclesiastical body "whose organization is conformed to the doctrines and order of this Church." BCO 18-6 (13),(17). This case remains the law of the Church, and it would clearly prohibit the delegation by presbytery (even were delegation generally permissible) of carte blanche power to an administrative commission to dismiss to ecclesiastical bodies not falling within the stated category. Whether another ecclesiastical body does fall within the general classification mentioned is itself a matter of judgment which must be determined by the dismissing authority as a precondition to dismissal. No such determination was formally made by the Presbytery of East Alabama in this case, nor did it require either its administrative commission or the sessions or congregations of its churches to make any such determination. In this broader respect also, the action of the presbytery is in violation of the law of the denomination as declared in the *Anderson* case.

Another closely related constitutional infirmity in the resolution should be noted here. It would effectively undercut the most important real option open to presbytery when through the ravages of dissidence and schism the loyalist element in any of its churches no longer has the strength to sustain the church as its congregation: that of dissolving the church under BCO 16-7 (9), with the consequences for loyalist members and for ownership of church property provided in BCO 8-18 and 6-3 respectively. As pointed out in the *Anderson* case, this is the only live option from a practical and legal standpoint open to presbytery in these circumstances, since it may not constitutionally simply surrender the church to a dissident majority by dismissing it to "independency" or to any but a limited set of other ecclesiastical bodies within or closely associated with this denomination. Under the resolution in question there is no provision for acting upon or even considering this

constitutionally grounded option once a congregational meeting to consider "dismissal" has been set in motion. This power and responsibility of presbytery may not constitutionally be circumvented in the way here attempted.

To this point this opinion has dealt only with the specific question of the presbytery's constitutional authority to delegate, as here attempted, its power to dismiss *churches*. There is also the question of its power to delegate — in the way here attempted — its exclusive power to dismiss *ministers*. This is theoretically a separate question and one concededly not fraught with as serious constitutional difficulties as those attending the dismissal of churches. It involves only a single person and not an entire congregation. The resolution in question does not attempt, as it does in the case of the churches themselves, to delegate the question of a minister's dismissal to congregational vote. Clearly, as a practical matter, a minister may not in the final analysis be held against his will in a formal relationship with presbytery. Nevertheless, there are constitutional procedures for dissolution of pastoral relationships with churches and consequent dismissals of ministers by presbytery, BCO 28-1, 28-2, which are clearly not those suggested by this resolution. Actually the procedure contemplated for dismissal of ministers is not at all plain from the resolution. This may well reflect the secondary importance which it had in the totality of interests obviously leading to adoption of the resolution. Since there existed the possibility that individual congregations and their ministers might split on the desire for dismissal, that eventuality had to be dealt with by the authors of the resolution, and it is to this point that the resolution essentially addresses itself so far as ministers are concerned. Nevertheless, despite the theoretical separability of the two questions and the less serious the question affecting dismissal of ministers, we conclude that under the circumstances of this particular case the two matters are inseparably linked, and that in addition to the irregularity with respect to the procedure for dismissing ministers the constitutional infirmity with respect to the dismissal of churches necessarily extends to the whole design. If the procedure for dismissing churches fails constitutionally, there remains no reason in the plan for dealing with the possibility of divergent interests between minister and congregation about their separate "dismissals" from presbytery.

A necessary implication of the legal conclusions so far stated is that any "dismissals" of either churches of ministers effected under the presumed authority of the resolution in question are without any force or effect under the law of this denomination. Despite the difficulty of trying to anticipate and speak to the consequences of specific decisions, since they may not in fact develop, it nevertheless seems expedient to address some of the most obvious questions which may arise as a result of this decision. As the formal judgment in this case will plainly state, the effect of the irregularity of all such purported dismissals is — from the standpoint of the Presbyterian Church in the United States — to restore all affected ministers and churches to the rolls and under the authority of the Presbytery of East Alabama or, more properly, to treat them as having never been properly removed from the rolls or

authority of that presbytery and this denomination. Questions will presumably then arise about the legal and practical implications of this adjudication for the denomination and for directly affected churches and ministers. In the case of "dismissed" ministers of churches which were not "dismissed", the ministers themselves might now seek formal dissolution of their pastoral relationships under BCO 28-1. Failing this, their former churches should do so under BCO 28-2 in order to clarify the status as a matter of record. Failing either of these, (or concurrently therewith) the Presbytery may proceed under the informal disposition procedure of BCO 11-3, officially to divest the minister of any authority to exercise the office of minister in this denomination. This too would officially determine for the record the status in question. The status of "dismissed" churches presents a more complex problem, and where a minister of such a "dismissed" church has also been "dismissed", the status of the church itself must first be officially clarified before that of the minister can be addressed along the lines above suggested. Addressing the problem of the "dismissed" church, it is of course first to be hoped that any persons who as part of the dissident majority of the church may now exercise or claim the right to exercise practical control over its property and affairs will accede voluntarily to the authority of this judgment, relinquishing all claim and turning over control of both property and affairs to such loyalist members as may desire to assume control, or to presbytery if such elements do not come forward. If they do not accede, events must await first the initiative of loyalist elements in the church who desire to invoke their rights under church and civil law. Their rights under church law are as expressed in this judgment — to be recognized and to act under church law as the congregation of the particular church. Unless and until that church is hereafter properly dissolved or dismissed by presbytery from connection with this denomination in accordance with principles stated in this opinion and that in the *Anderson* case, such rights will continue indefinitely in such persons and future loyalist members. Their rights under civil law, essentially to control of church property, follow from church law as embodied in its constitution and the decisions of its courts, including this decision. If these property rights are not voluntarily acceded to by opposing claimants, they may only be vindicated in the civil courts.

In the case of any "dismissed" churches in which there may not now exist loyalist elements willing to assume control or to take the necessary initiatives under church and civil law to vindicate their rights under both, the initiative for action must lie with presbytery. Its options certainly include those of attempting practically to develop a viable congregation which can assert its rights directly against any opposing claimants, and legally, of dissolving the church if the former result cannot be achieved. BCO 16-7(9).

Finally, there may arise questions at congregation, session and presbytery level about the rights of any former ministers and ruling elders who now consider themselves to be associated with other ecclesiastical bodies but who nevertheless attempt to participate in meetings of congregations, sessions or of the presbytery. Here it is of course to be hoped and expected that such

persons will be guided by simple personal civility and propriety not to attempt participation. If such efforts should nevertheless be made, appropriate procedures are available to avoid their participation or to challenge any actions taken by church courts in which they purported to participate. These include informal procedures for divesting individuals of membership and authority under BCO 111-2 and 111-3 respectively; formal disciplinary proceedings for deposition of officers under BCO 103-5, 107-5, 108-7; and complaint against the action of any court under BCO 117-1.

Accordingly, it is the *Preliminary Judgment* of the Permanent Judicial Commission that:

1) the action of the Presbytery of East Alabama in adopting the resolution in question is wholly unconstitutional, hence void and of no effect;

2) any actions taken thereunder by sessions, congregations, ministers, or the administrative commission are similarly void and of no effect;

3) any ministers purportedly dismissed thereunder remain within the jurisdiction of the Presbytery of East Alabama and subject to its constitutional authority until dismissed in accordance with proper procedures; and

4) any churches purportedly dismissed thereunder remain within the jurisdiction of the Presbytery of East Alabama and subject to its constitutional authority.

As this Judgment accords with that of the Judicial Commission of the Mid-South, the complaint under consideration is not sustained.

* * *

The Moderator put the following question: "Shall the preliminary judgment of the Permanent Judicial Commission in the General Assembly Complaint No. 1-1976, as above recorded, be made the final judgment of the General Assembly?" After a question from the floor the Moderator advised Commissioners from the Synod of the Mid-South that they were not to vote on the question. There being no further questions and no requests for clairfication, and upon vote of the Assembly, the Moderator declared, "The preliminary judgment of the Permanent Judicial Commission in the case of Robert Strong, et al, complainants, versus the Judicial Commission of the Synod of the Mid-South, Respondent, **is now the final judgment** of the General Assembly, and the case is herewith closed."

APPENDIX D

STATEMENT OF POSITION OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES ON PROPERTY.

EXCERPT FROM MINUTES OF GENERAL ASSEMBLY — 1971, APPENDIX pp. 188-189.

The Permanent Judicial Commission has laboriously reviewed the Book of Church Order as presently revised, the historic roots from which it grew, the origin and formation of the Church, the structure and life of the Church, the doctrine of the Church, and its tradition.

The Permanent Judicial Commission believes that a general revision of Chapter 6 of the Book of Church Order is not merited at this time. It believes that the provisions of Chapter 6 are sufficiently clear to respond to the questions of ownership of property which are presented by the above overtures.

The Permanent Judicial Commission recommends that the General assembly adopt the following statement with respect to the overtures:

The following declaratory statement was adopted by the General Assembly in 1953 (*Minutes*, 1953, pp. 42, 143) after a study and recommendation of a committee appointed for the purpose of studying the question and reporting back with a recommendation for amendment to the Book of Church Order, if found necessary.

"The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation, with, respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. *In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church.* (Emphasis added.)

"Disposition of the property of a particular church rests in the will of the congregation of that church. *The congregation is that body of persons recognized as members of that particular church by the respective courts of the Church.*" (*Assembly's Digest*, p. 76) (Emphasis added.)

In 1967 the Presbytery of Potomac overtured the General Assembly to make clear the Presbyterian Church, U.S. position regarding the ownership of church property. The General Assembly reaffirmed its 1953 statement and responded: "The Book of Church Order, when supplemented by the declaratory statement of the General Assembly of 1953, is sufficiently clear." (*Minutes*, 1967, p. 127.)

The Book of Church Order provides that Presbytery has the authority to receive and dismiss churches. Appellate procedure is outlined in Chapter 14 of the Form of Government and Part V of the Rules of Discipline.

It should be pointed out that Section 4-1(2) provides that upon organization, the members of the congregation of a Presbyterian church shall enter into a covenant and with uplifted hand ". . . *solemnly promise and covenent that they will walk together as an organized church, on the principles of faith and order of the Presbyterian Church in the United States, . . .*" (Emphasis added.)

All persons who subsequently enroll themselves as communing members on profession of faith of the particular church must first agree to submit themselves to the government and discipline of the Church. (Section 210-5(5), Directory for the Worship and Work of the Church.)

Ministers and other officers before ordination approve the government and discipline of the Presbyterian Church in the United States, and promise subjection to their brethren in the Lord. (Form of Government, Section 29-3, 27-6.)

When any Minister, other officer or communing member feels that he can no longer in good conscience remain a part of the Presbyterian Church in the United States, the Book of Church Order provides an honorable and orderly procedure for separating himself from it. (Rules of Discipline, Chapter 11.)

Section 14-5 of the Book of Church Order sets forth the sphere of action of each Church court and their interrelations to each other: "These courts are not separate and independent tribunals. They have a mutual relation, and every act of jurisdiction is the act of the whole Church performed by it through the appropriate Church court."

Section 16-7 of the Book of Church Order provides that Presbytery has the power to receive, dismiss, ordain, install, remove and judge ministers, to review the records of the Sessions, redress whatever they may have done contrary to order, and take effectual care that they observe the Constitution of the Church. The Presbytery further has the power to establish the pastoral relation and to dissolve it at the request of one or both of the parties or where the interest of religion imperatively demands it and, further, the Presbytery has the power and authority to see that the lawful injunctions of the higher courts are obeyed, to condemn erroneous opinions which injure the purity or peace of the church, to visit churches for the purpose of inquiring into and redressing evils that may have arisen in them, to unite or divide churches at the request of the members, to form and receive new churches, to dissolve churches and in general to order whatever pertains to the spiritual welfare of the churches under its care. Further, the Presbytery has the power and authority to appoint commissioners to the General Assembly of the Church and to propose to the Synod or to the General Assembly such measures as may be of common advantage to the whole Church.

It takes more than a name to become a Presbyterian Church, U.S. It takes more than to profess the same faith as the Presbyterian Church, U.S.

professes to become a Presbyterian Church, U.S. It takes a profession of that faith and *subjection to the government of that Church to make a Presbyterian Church, U.S.*

A Presbyterian congregation, with its officers, pastor, elders and deacons, is a complete organization in itself, but it is not independent. (Preface to the Form of Government, III, 1, 5.) It is a part of an extended whole, living under the same ecclesiastical constitution, and therefore subject to the inspection and control of the Presbytery, whose business is to see that the standards of doctrine and rules of discipline are adhered to by the particular churches under its care. It is the court of review and control, over all the sessions of the particular churches within its bounds. To the Presbytery are superadded the higher judicatories of Synods and General Assemblies, as the means of preserving the standards of doctrine and discipline on a more extended territorial scale.

Such has been the organization of the Presbyterian Church in Scotland, from the time of John Knox to this date, and has been substantially followed by the Presbyterian Church in England and the United States.

The foregoing represents the Presbyterian Church, U.S. position on church property. This position is subject, however, to the civil laws of the State where the property is situated. Generally, however, the civil courts conclude that a congregation belonging to a religious denomination and subject to the constitution, faith and doctrines thereof, cannot use its property for a purpose which violates the relationship of the congregation to the denomination.

APPENDIX E

OPINION OF THE SUPREME COURT OF GEORGIA

Decided: Sept. 27, 1979

JONES *et al.*
v.
WOLF *et al.*

33126.

NICHOLS, Chief Justice.

1. The decision of this court in *Jones v. Wolf*, 241 Ga. 208 (243 SE2d 860) (1978), has been vacated, and the case has been remanded to this court for further proceedings. Jones v. Wolf, _____U. S._____(_____S. Ct._____, _____LEd2d _____), 47 L.W. 4962 (1979).

2. Georgia has adopted for use in church local schism cases a "presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means." *Jones v. Wolf*, supra, 47 L.W. at 4965. That presumption is overcome under Georgia law by an application of what has come to be known as "neutral principles" of law — that is, "state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination." *Crumbley v. Solomon*, 243 Ga. 343(SE2d) (1979). In deciding these cases, this court has sought to avoid resolving church property disputes on the basis of religious doctrine and practice. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U. S. 696, 710 (96 S. Ct. 2372, 49 LEd2d 151) (1976). Accepting the dictates of a church court that decided which faction had the right of use and enjoyment of church property, based upon church court resolution of matters of religious doctrine or faith, was perceived by this court as being contrary to the spirit of controlling law.

Maryland and Virginia Eldership of the Church of God v. Church of God at Sharpsburg, 396 U. S. 367, 368 (90 S. Ct. 499, 24 LEd2d 582) (1970); *Jones v. Wolf*, supra. Now clearly given the choice to opt for either rule, this court chooses to adopt the rebuttable presumption of majority rule.

3. The parties apparently did not argue the applicability of Code Ann. § 22-5504 in their briefs filed in the Supreme Court of the United States. Appellees had stipulated in the trial court that this section applies only to churches having a congregational form of government. The Supreme Court of the United States has expressed concern about why this section was not discussed in the opinion of this court in *Jones v. Wolf*, supra. *Jones v. Wolf*, 47 L. W. at 4965. The existence of that stipulation is the reason. Code Ann. § 22-5504, like its predecessor, Code Ann. § 22-406, properly is to be construed as being applicable only to churches having a congregational form of government. See, *Sapp v. Callaway*, 208 Ga. 805 (69 SED2d 734) (1952.).

In applying Code Ann. §§ 22-5507 and 5508 to the present litigation, this court is not concerned with the procedure by which factions within the local church and the national church decide which persons are "true believers" or "adherents to the true faith". Rather, church documents will be considered only insofar as they determine or assist in the determination of the persons who are "entitled to possess and enjoy the property located at 2193 Vineville Avenue in Macon, Ga." *Jones v. Wolf*, 47 L. W. 4962, at 4963. Stated otherwise, the only question for the courts is "which of the factions within the local congregation has the right to control the actions of the titleholder, and thereby to control the use of the property . . ." *Jones v. Wolf*, supra at 4966. The church documents in the present case speak to resolution of doctrinal disputes. They are silent as to which persons have the right to enjoy and to use the church property in the event of a schism at the local level.

5. After our decision in *Jones v. Wolf*, 241 Ga. 208 (243 SE2d 860) (1978), this court applied the "neutral principles doctrine" in a case in which two local church factions were aligned against each other in litigation while the national church chose to align itself with the one local group against the

other. *Crumbley v. Solomon*, supra. The Supreme Court of the United States has permitted Georgia to apply the principle of presumptive majority rule to local schism cases, provided only that this court shall articulate the method by which this presumption may be overcome. *Jones v. Wolf*, 47 L. W. at 4965. The presumption may be overcome by reliance upon neutral statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination. *Crumbley v. Solomon*, supra at 343. A review of those sources discloses no provision that would rebut the Georgia presumption of majority rule as to the right to control the actions of the titleholder — that is, as to the right to possess, enjoy and control the use of these church premises. This silence distinguishes the present case from *Crumbley v. Solomon*, supra.

6. The judgment of the trial court is affirmed for the reasons stated in this opinion.

Judgment affirmed.
All the Justices concur except Undercofler, P. J., and Jordan, Hill and Bowles, J. J., who concur in the judgment only, and Marshall, J., who dissents.

APPENDIX F

OPINION
OF THE
SUPREME COURT OF FLORIDA

No. 51, 588

CRAIG MILLS, *et al.*,

Petitioners,

vs.

JOHN P. BALDWIN, *etc.*, *et al.*,

Respondents.

[October 25, 1979]

ON REMAND

PER CURIAM

Upon a grant of certiorari, reported at _____U. S. _____, 99 S. Ct. 3105, 61 L. Ed. 878 (1979), the Supreme Court of the United States vacated the judgment of this Court in *Mills v. Baldwin*, 362 So.2d 2 (Fla. 1978), and remanded the cause for further consideration in light of *Jones v. Wolf*, _____U. S._____, 99 S. Ct. 3020, 61 L. Ed. 775 (1979). We have carefully reviewed *Jones v. Wolf* and find our decision in *Mills v. Baldwin* to be not inconsistent with the principles enunciated therein.

Accordingly, our decision in *Mills v. Baldwin* is hereby reinstated and the cause is remanded to the District Court of Appeal, First District, for proceedings not inconsistent with this decision.

It is so ordered.